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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	NO. 44534
)	
Plaintiff-Respondent,)	BANNOCK COUNTY
)	NO. CR 2015-15275
v.)	
)	
ZUATNEY GONZALEZ,)	
)	
Defendant-Appellant.)	
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BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BANNOCK**

**HONORABLE ROBERT C. NAFTZ
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Zuatney Gonzalez appeals following the district court's order denying her motion for credit for time served. Ms. Gonzalez asserts that the district court erred in denying her credit for 82 days of prejudgment incarceration when she was being held in the Bannock County case while she was incarcerated in the Canyon County Jail. Although the district court granted Ms. Gonzalez's motion in part, giving her credit for time served from the service of the Bannock County arrest warrant on March 3, 2016, until she was sentenced on the Bannock County case on May 2, 2016, a Bannock County hold was placed on December 11, 2015, thus, Ms. Gonzalez was in custody on this case for an additional 82 days, from December 11, 2015, until March 3, 2016. Ms. Gonzalez argues that the plain language of Idaho's credit for time served statute mandates credit for her prejudgment, concurrent incarceration in Canyon County where she had a Bannock County hold during her Canyon County incarceration. She is owed an additional 82 days of credit for time served.

Statement of the Facts and Course of Proceedings

On September 30, 2015, an officer responded to Sportsman's Warehouse, after an employee had reported that two individuals had used fictitious credit cards to make purchases of approximately \$6,700. (R., p.16.) The individuals were identified as Alberto Torres and Zuatney Gonzalez. (R., p.16.)

Based on these facts, Ms. Gonzalez was charged by information with criminal possession of a financial transaction card, burglary, and grand theft. (R., pp.38-40.) Pursuant to a plea agreement, Ms. Gonzalez pled guilty to an Amended Information charging her with two counts

of unlawful possession of a financial transaction card. (4/19/16 Tr., p.8, Ls.10-20, p.11, Ls.11-14, p.21, L.3 – p.22, L.3; R., pp.56-66.) In exchange for her guilty plea, the State agreed to dismiss the remaining count and to recommend a sentence concurrent with Canyon County case number 2015-19062. (4/19/16 Tr., p.8, Ls.15-20; R., pp. 56-66.)

On each of the unlawful possession of a financial transaction card charges, the district court imposed five years, with one year fixed, concurrent with each other and concurrent with the Canyon County sentence. (5/2/16 Tr., p.34, Ls.10-19; R., pp.77-81.) The district court told Ms. Gonzalez it would give her “credit for all time served that you have been sitting in Bannock County that you should receive on this charge; okay?” (5/2/16 Tr., p.34, L.25 – p.35, L.2.) The judgment of conviction did not reflect any credit for time served. (R., pp.77-81.)

Ms. Gonzalez filed a Motion for Credit for Time Served. (R., pp.84-87.) Ms. Gonzalez asked for credit for the 134 days she spent in custody in Canyon County after the Bannock County warrant was issued.¹ (7/18/16 Tr., p.8, L.9 – p.9, L.14; R., p.84.) In support of her motion, she attached a booking record indicating she had a Bannock County hold beginning December 11, 2015. (R., p.87.) After a hearing on July 18, 2016, the district court granted the motion in part and denied the motion in part. (R., p.95.) The court issued a written order giving Ms. Gonzalez credit only from the date she was served with the Bannock County warrant on March 3, 2016, to the date of Bannock County sentencing of May 2, 2016, but denied her credit for the full 134 days (October 21, 2015, to March 9, 2016) she requested. (R., pp.90-95.)

Ms. Gonzalez made an oral Rule 35 motion asking the district court to reconsider the sentence to give her credit for the time she was incarcerated in Canyon County so that the time

¹ Although Ms. Gonzalez initially requested 134 days of credit for time served, on appeal Ms. Gonzalez asserts that she is entitled to an additional 82 days of credit for the time she was held on the Bannock County charges starting on December 11, 2015. (R., p.87.)

for parole on all sentences would be consistent. (8/22/16 Tr., p.36, Ls.9-18.) The district court denied the motion for leniency after a hearing. (8/22/16 Tr., p.37, Ls.2-15; R., pp.106-107.)

Ms. Gonzalez filed a Notice of Appeal timely from the district court's order denying her credit for time served and the subsequent Rule 35 motion. (R., pp.99-102.)

ISSUE

Did the district court err when it denied Ms. Gonzalez's motion for credit for time served?

ARGUMENT

The District Court Erred When It Denied Ms. Gonzalez's Motion For Credit For Time Served

A. Introduction

Ms. Gonzalez asserts that the district court erred when it denied her request for credit for time served. Ms. Gonzalez is entitled to credit for pre-judgment incarceration for all of the time she was held in conjunction with the charges in her Bannock County case. Ms. Gonzalez asserts that, because the facts in the record clearly establish she is owed an additional 82 days of credit for the time she was being held in Canyon County, on the Bannock County charges, from December 11, 2015, to March 3, 2016, the district court erred in denying her motion for credit for time served. She respectfully requests that this Court order that she be given credit for time served in the amount of 82 days.

B. Standard Of Review

A determination as to “[w]hether the district court properly applied the law governing credit for time served is a question of law over which” appellate courts exercise free review. *State v. Covert*, 143 Idaho 169, 170 (Ct. App. 2006). On appeal, the appellate court will “defer to the district court’s findings of fact, however, unless those findings are unsupported by substantial and competent evidence in the record and are therefore clearly erroneous.” *Id.* The Court exercises “free review over statutory interpretation because it is a question of law.” *State v. Owens*, 158 Idaho 1, 3 (2015).

C. The District Court Erred When It Denied Ms. Gonzalez's Request For Credit For Time Served

The Idaho Criminal Rules specifically provide that a defendant may file a motion to correct the calculation of credit at any time. I.C.R. 35(c). Further, as the Idaho Court of Appeals

has recently made clear, “the language of I.C. § 18-309 is mandatory and requires that, in sentencing a criminal defendant or (as in this case) when hearing an I.C.R. 35(c) motion for credit for time served, the court give the appropriate credit” *State v. Moore*, 156 Idaho 17, 20-21 (Ct. App. 2014). “This means that the defendant is entitled to credit for all time spent incarcerated,” as defined by the statute. *Id.*

Idaho Code section 18-309 governs when credit must be given for both pre- and post-judgment incarceration and provides, in relevant part:

(1) In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for *any* period of incarceration prior to entry of judgment, if such incarceration was *for the offense* or an included offense for which the judgment was entered. . . .

I.C. § 18-309(1) (emphasis added). The language of Idaho Code section 18–309 entitles a defendant to credit for “any period of incarceration” and notably does not base credit on any factor other than actual incarceration.

The plain language of Idaho Code section 18-309(1) is unambiguous. *State v. Owens*, 158 Idaho 1, 4 (2015). “Statutory interpretation begins with the statute’s plain language.” *Id.* at 3. The Court “considers the statute as a whole, and gives words their plain, usual, and ordinary meanings.” *Id.* “When the statute’s language is unambiguous, the legislature’s clearly expressed intent must be given effect, and [the Court does] not need to go beyond the statute’s plain language to consider other rules of statutory construction.” *Id.* This case involves the interpretation of the second phrase of Idaho Code section 18-309(1): “if such incarceration was for the offense or an included offense for which the judgment was entered.” I.C. § 18-309(1). Examining the plain language of this second phrase, it is clear that Idaho Code section 18-309 mandates credit for prejudgment time served for an offense regardless of any concurrent incarceration for other offenses or cases.

The language of Idaho Code section 18-309 can be compared to Idaho Code section 19-2603, which governs the determination of credit for time served following a probation violation and provides:

The defendant shall receive credit for time *served from the date of service of a bench warrant* issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation, for any time served following an arrest of the defendant pursuant to section 20-227, Idaho Code, and for any time served as a condition of probation under the withheld judgment or suspended sentence.

I.C. § 19-2603 (emphasis added). “Under the plain terms of I.C. § 19-2603, a defendant is entitled to credit for time served from service of a bench warrant for a probation violation.” *State v. Bitkoff*, 157 Idaho 410, 413 (Ct. App. 2014). Clearly the Idaho Legislature was aware of how to craft language limiting credit for time served from the date of service of a warrant, but, in drafting this statute, Idaho Code section 18-309, it chose not to limit the credit in such a manner.

In *State v. Brand*, the Idaho Supreme Court recently decided the issue of whether a defendant is entitled to credit for time served when the defendant is being held on charges from more than one county. *State v. Brand*, No. 44221, 2017 WL 2350303, at *3 (Idaho May 31, 2017). In *Brand*, the Court held that, in determining whether the defendant is entitled to credit, a two-part test is applied, “first, the defendant must have been incarcerated during the intervening period from when the arrest warrant was served and the judgment of conviction was entered; and second, putting aside any alternative reason for the defendant's incarceration, the relevant offense must be one that provides a basis for the defendant's incarceration.” *Id.*

That is, the plain language of the statute does not limit entitlement to credit to only apply in those circumstances where a warrant is served, but mandates credit for “*any* period of incarceration.” I.C. § 18-309 (emphasis added). It provides that a defendant is entitled to credit where “such incarceration was for the offense or an included offense for which the judgment was

entered,” and does not require the service of a warrant before a defendant can be deemed incarcerated for the offense. I.C. § 18-309; *State v. Owens*, 158 Idaho 1, 4 (2015) (holding that “Idaho Code section 18-309’s language plainly gives credit for prejudgment time in custody against each count’s sentence”, and “does not limit that credit in any way”).

The analysis in *Brand* comports with the award of credit to a defendant in Ms. Gonzalez’s situation:

Put another way, section 18-309 entitles Brand and Nall to credit for time served “as long as [their] prejudgment jail time was for ‘the offense’ [they were] convicted of and sentenced for[.]” *Owens*, 158 Idaho at 4, 343 P.3d at 33. Aside from that requirement, the statute “does not limit that credit in any way.” *Id.* Section 18-309 does not limit credit for time served only if, for example, the offense for which the defendant is jailed is that which caused the defendant’s initial deprivation of liberty. Rather, section 18-309 applies to all offenses that provide a basis for the defendant’s incarceration. It is irrelevant if the defendant’s incarceration rests on several, unrelated offenses, as the fact remains that each offense provides a basis for the defendant’s incarceration.

Brand, 2017 WL 2350303, at *3.

Here, the record establishes that a warrant was issued in the Bannock County case on October 21, 2015. (R., p.9.) On December 14, 2015, at an in-custody arraignment hearing held by the district court in Canyon County, the court informed Ms. Gonzalez of the Bannock County warrant and her options. (R., p.20.) The minutes of this hearing indicate that Ms. Gonzales was thereafter remanded to the custody of the sheriff with a \$25,000 bond. (R., p.20.) Ms. Gonzalez was held for Bannock County from December 11, 2015, until she was officially served with the warrant on March 3, 2016.² (R., pp.2, 9, 87.) Ms. Gonzalez was sentenced on her Canyon

² The record does not indicate what document or documents, if any, were sent to Canyon County to effectuate the hold; however, similar to the facts of *State v. Rogers*, a copy of the unserved bench warrant that was issued back in October of 2015, or even a telephone call could have been used to detain Ms. Gonzalez. See *State v. Rogers*, 140 Idaho 223 (2004) (finding that the district court did not intend to relinquish jurisdiction and it had asked the prosecutor to get a bench warrant lodged as a detainer).

County charges on March 7, 2016, and an arraignment order to attend the preliminary hearing on her Bannock County charges was entered on March 10, 2016. (R., pp.2, 23, 28, 86; Idaho Supreme Court Data Repository.) Ms. Gonzalez remained in custody until she pled guilty to the Bannock County charges on April 19, 2016, and was sentenced on May 2, 2016. (R., pp.28, 41-42, 50, 55-56, 69 77-80.)

In response to Ms. Gonzalez's motion for credit for time served, the district court credited her with the amount of time from when she was served with the Bannock County arrest warrant to when she was sentenced in Bannock County—from March 3, 2016, to May 2, 2016. (R., pp.94-95.) However, the district court otherwise denied Ms. Gonzalez's motion for credit for time served. (*See* R., pp.94-95.) However, this was error as the analysis in *Brand* comports with the award of credit to a defendant held on another county's charges such as existed in Ms. Gonzalez's situation.³ Once Bannock County placed a hold on Ms. Gonzalez on December 11, 2015, she was being held on those offenses and was therefore entitled to the additional credit from December 11, 2015, to March 3, 2016. Therefore, the district court erred in denying Ms. Gonzalez credit for time served as she is entitled to 82 additional days of credit for time served on her Bannock County case.

³ Admittedly, the district court did not have the benefit of the Idaho Supreme Court's decision in *Brand* when it denied Ms. Gonzalez's motion for credit for time served; however, in light of the Court's clarification on the entry of credit for time served when a defendant is incarcerated on charges from multiple counties, Ms. Gonzalez asks the Court to reverse the district court's decision denying her credit.

CONCLUSION

For the reasons set forth herein, Ms. Gonzalez respectfully requests that this Court order that she be given additional credit for time served in the amount of 82 days.

DATED this 31st day of July, 2017.

/s/

SALLY J. COOLEY

Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2017, I served a true and correct copy of the foregoing BRIEF OF APPELLANT as follows:

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